

WAUKESHA COUNTY
SOIL AND WATER CONSERVATION STANDARDS
FOR THE FARMLAND PRESERVATION PROGRAM

Section I. Authority, Purpose, and Applicability.

- A. This policy is established by the Waukesha County Land Use, Parks and Environment Committee pursuant to ss.92.104, 92.105, Wis. Stats. and ATCP 50.16, Wis. Adm. Code, and related guidelines adopted by the Wisconsin Land and Water Conservation Board under s. 92.105(2). It provides for soil and water conservation standards to be met and procedures to be followed by participants in the Wisconsin Farmland Preservation Program. Conformance with these standards and procedures will be necessary for landowners to establish and maintain eligibility for farmland preservation tax credits under Subchapter IX of Chapter 71, and ss.92.104 and 92.105, Wis. Stats.
- B. These standards shall apply to all landowners who claim a farmland preservation tax credit for which they are eligible because their land is located in a district zoned exclusive agricultural use. In cases where the tax credits are based on the landowner participating under a farmland preservation agreement, the landowner is subject to the soil and water conservation standards applicable at the time the agreement was signed by the landowner.

Section II. Definitions.

- A. Committee means the Waukesha County Land Use, Parks and Environment Committee appointed by the Waukesha County Board of Supervisors. (*Note: They serve as the Land Conservation Committee under 92.06 Wis.Stats.*)
- B. Cropland means land used for the growing and harvesting of grains, legumes, grasses, fruits or vegetables; including land used for such purposes that may occasionally be used for livestock pasture.
- C. Department means the Waukesha County Department of Parks and Land Use – Land Resources Division.
- D. Farmland means land used for any agricultural uses defined in s. 91.01(1), Wis. Stats. including beekeeping; commercial feedlots; dairying; egg production; floriculture; fish or fur farming; forest and game management; grazing; livestock raising; orchards; plant greenhouses and nurseries; poultry raising; raising of grain, grass, mint and seed crops; raising of fruits, nuts and berries; sod farming; placing land in federal programs in return for payments in kind; and vegetable raising.
- E. Gully Erosion means a small valley or ravine originally worn away by running water and serving as a drainage way after prolonged heavy rains. Gully erosion involves the

formation or enlargement of small to medium size ravines or channels that are too large to be obliterated by normal tillage operations.

- F. Participant means a landowner who owns land that is included on a valid zoning certificate or subject to a farmland preservation agreement under s. 71.59(1), Wis. Stats.
- G. RUSLE II (Revised Universal Soil Loss Equation – revision 2) means the mathematical formula for estimating or predicting average annual soil erosion rates due to sheet and rill erosion caused by rainstorms on specified land areas, as described in Section I of the Technical Guide.
- H. Schedule of Compliance means a document that describes actions to be taken by a landowner to comply with the soil and water conservation standards in Section III of this policy. The document will usually include maps of the site and a list of conservation practices and timelines for their installation or use. (*Note: May also be included in a “Conservation Plan”*).
- I. Technical Guide means the Wisconsin version of the Field Office Technical Guide published by the Natural Resources Conservation Service of the U.S. Department of Agriculture.
- J. T-Value means the maximum average annual rate of soil erosion for each soil series that will permit a high level of crop productivity to be sustained economically and indefinitely. T-values for each soil series are specified in Section I and II of the Technical Guide.
- K. Wind Erosion Equation means the mathematical formula for estimating or predicting average annual soil erosion rates due to wind erosion, as described in Section I of the Technical Guide.

Section III. Soil and Water Conservation Standards.

- A. Standards - Participants shall implement the following soil & water conservation standards on all lands for which the participant claims farmland preservation tax credits:
 - 1) Sheet, rill and wind erosion, under NR 151.02 and ATCP 50.04(2).
 - 2) Manure storage facilities, under NR 151.05.
 - 3) Clean water diversions, under NR 151.06.
 - 4) Nutrient management, under NR 151.07 and ATCP 50.04(03).
 - 5) Manure management prohibitions, under NR 151.08.
 - 6) Gully erosion shall be controlled in accordance with the procedures and practices in the Technical Guide.
- B. Certification - Participants shall, upon request by the department, certify in writing that they comply with the county's soil and water conservation standards. For participants with an ongoing schedule of compliance the participant shall certify that the annual progress to achieve required standards has or has not been accomplished. Certification

may be made by mail or in person to the department on forms provided by the department.

Section IV. Schedule of Compliance

Where changes in management are required to comply with the standards described in Section III, the department shall approve a schedule of compliance for the participant. The department may allow a schedule of compliance of up to five years to meet standards from the year this policy first applies to the participant. Each participant shall make sufficient annual progress to ensure that the standards will be met by the end of the schedule of compliance.

Section V. Variances

- A. Committee Approval - The committee or the department may authorize a variance from a schedule of compliance when, upon a showing by a participant, unnecessary hardship would result from meeting the approved schedule of compliance. Before a variance is granted upon the ground of unnecessary hardship, the committee must make all of the following findings: (1) That the standard schedule of compliance, by itself, would preclude a reasonable return from the land in question; (2) That the plight of the participant is due to unique circumstances and not to the general conditions of the area which may reflect the unreasonableness of the schedule of compliance itself; and (3) That the conditions authorized by the variance will not have significant off-site impacts. The committee may not authorize a variance from the soil and water conservation standards in Section III.
- B. Cost-Sharing - The unavailability of cost-sharing funds to install needed practices, by itself, will not be sufficient grounds for the committee to grant a variance. The availability of cost-sharing funds may be considered in determining reasonable return under (A), however, a variance shall not be granted to allow time for the implementation of an expensive conservation practice when the implementation of a less expensive practice would allow the participant to meet the standard schedule of compliance.

Section VI. Administration.

- A. Authority - This policy shall be administered by the Waukesha County Department of Parks and Land Use – Land Resources Division. Technical assistance may also be provided by available staff of the Natural Resources Conservation Service, U.S. Department of Agriculture. The Land Resources Manager shall approve all schedules of compliance under Section IV.
- B. Monitoring Compliance - Department staff will determine individual compliance with the required soil and water conservation standards of Section III, at a minimum, once every six years. This determination will be made through a combination of field

inspections, information submitted by the participant, and examination of aerial photos or slides.

- C. Technical Assistance - If it is determined that a participant is out of compliance with any of the standards of Section III, the participant shall develop a schedule of compliance. The department shall offer assistance to the participant in developing the schedule of compliance at no cost to the participant. The schedule of compliance must be approved by the department.
- D. Notice of Noncompliance - The department shall issue a written notice of noncompliance to a participant if the department finds that the participant has done any of the following:
- (1) Failed to comply with county soil and water conservation standards under Sec. III;
 - (2) Failed to comply with an existing conservation plan or schedule of compliance;
 - (3) Failed to permit reasonable inspection to determine compliance with conservation standards or an existing schedule of compliance;
 - (4) Failed to certify compliance with county standards or an existing schedule of compliance in response to a department request.

The notice of noncompliance shall disclose all of the following:

- (1) The nature of the violation(s) and deadline date(s) for action needed to correct the violation(s);
- (2) That the participant may not claim FPP tax credits unless and until the participant corrects the violation;
- (3) That the participant may meet and discuss the alleged violation with the department and an explanation of how the participant may do so.
- (4) That any decision made by the department may be appealed to the committee, and an explanation of how the participant may do so.

The department may choose to (but is not required to) give a participant up to 5 years to remedy non-complying conditions, without the loss of tax credits, if the participant carries out the plan to correct the violations. The department's choice of compliance strategy and timing will depend on a variety of factors, including the seriousness of the violations, the participant's compliance history, the participant's willingness to comply, and the nature of the corrective actions required.

If a participant fails to remedy the violation or appeal by the date specified, the department shall forward a copy of the notice of noncompliance to the Wisconsin Department of Revenue and the appropriate zoning authority. This referral suspends tax credit eligibility. It is not necessary to offer cost-sharing to the participant before suspending the participant's tax credit eligibility. The department may withdraw the notice if the participant complies or the notice is incorrect.

E. Notice of Meeting

Prior to issuing a notice of noncompliance under (D), the department shall notify the affected participant by registered mail that the department is considering issuing a notice of noncompliance and provide the participant an opportunity to present to the department reasons why the notice of noncompliance should not be issued or to request a variance under Sec. V. The department shall provide at least ten days notice to the participant prior to the issuance of a notice of noncompliance and the committee meeting at which the participant may appeal for a variance request to the schedule of compliance. A notice of meeting is not required if the notice of noncompliance is voluntarily agreed upon due to a participant not wishing to participate in the program.

F. Cancellation of Notice of Noncompliance

If a participant who has been issued a notice of noncompliance subsequently complies with the standards in Section III, or obtains an approved schedule of compliance, the department shall cancel the notice of noncompliance. The cancellation of the notice of noncompliance must be based on a request from the affected participant and a field inspection of the farm operation. Notice of the cancellation of the notice of noncompliance will be given to the appropriate zoning authority, the Wisconsin Department of Revenue, and the Wisconsin Department of Agriculture, Trade and Consumer Protection.

Section VII. Annual Report

By April 15th of each year, the department will prepare a report and submit it to DATCP, of the previous year's status of administering this policy. The report will be consistent with ATCP 50.18 Wis. Stats.

Section VIII. Amendments

This policy may be amended following a public hearing held by the committee for which a class 2 notice shall be published. All amendments shall be consistent with the Wisconsin Land and Water Conservation Board Guidelines for soil and water conservation requirements in the Farmland Preservation Program.

Section IX. Approvals

Approved by the Wisconsin Land and Water Conservation Board on June 7, 2005.

Approved by the Waukesha County Land Use, Parks and Environment Committee
_____, 2006.